IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 185 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KISHORSINH NATWARSINH VASDIYA

Versus

STATE OF GUJARAT

Appearance:

MS SADHANA SAGAR for Petitioner

MR BY MANKAD, APP for Respondent No. 1

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 05/12/2000

ORAL JUDGEMENT

The original accused of Criminal Case No.1030/99 which was pending on the file of learned Judicial Magistrate (First Class), Devgadh Baria, District Panchmahals (who will be referred to as `the learned Magistrate' hereinafter for brevity) has by sending his

application through Jailor of Baroda Central Jail, challenged the legality and propriety of judgment Exh.4 dated 11th April, 2000, rendered by learned Additional Sessions Judge, Panchmahals at Godhra, in Criminal Appeal No.11/2000.

2. As per record accused faced a trial before the learned Magistrate for offences punishable under Secs.324, 504 of Indian Penal Code and also under Sec.135 of the Bombay Police Act, in Criminal Case No.1030/99. At the end of trial, the learned Magistrate held the accused guilty under Sec.248(2) of Cr.P.C. and convicted accused for an offence punishable under Sec.324 of IPC and sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs.1000/- and in default to undergo further imprisonment for four months. The learned Magistrate also convicted the accused for an offence punishable under Sec.135 of the Bombay Police Act and sentenced to undergo imprisonment for six months and to pay a fine of Rs.200/- and in default to undergo further imprisonment of 15 days. The learned Magistrate ordered to run both the sentences concurrently.

2.1 Being aggrieved against and dissatisfied with the said judgment of conviction and sentence, the accused preferred a Criminal Appeal No.11/2000 to the Sessions Court, Panchmahals at Godhra. After hearing the arguments of the learned advocates for both the parties, the learned Additional Sessions Judge, Panchmahals at Godhra,(who will be referred to as `the appellate Judge') by rendering his judgment Exh.4 dated 29.1.2000 dismissed the appeal of the accused and confirmed the order of judgment of conviction and sentence rendered by the learned Magistrate, in Criminal Case No.1030/99.

2.2 Being aggrieved against and dissatisfied with the said judgment of the appellate Judge, the accused has preferred this Criminal Revision Application from Jail.

2.3 When this Criminal Revision Application was placed before this Court at admission stage after hearing Ms.Sadhna Sagar, learned advocate for the petitioner this Court passed following order:

"Rule qua sentence only"

Therefore, this Criminal Revision Application has been heard on the point of sentence only.

3. Heard Ms.Sadhna Sagar, learned advocate for the petitioner and Shri B.Y.Mankad, learned APP for the

State.

4. Ms. Sadhna Sagar, learned advocate for the petitioner has argued that revision petitioner is in jail since 3rd October, 1999. The person who was injured had not sustained any serious injury because he was discharged from hospital on the same day, the day on which he was admitted in the hospital. The complaint was lodged by Vikasbhai Karansinh Rajput. As per his evidence recorded at Exh.11 incident took place at about 1.30 p.m. on 16th August, 1999. When he was standing near his own handcart of snacks, as deposed to by him, 8 days before the date of incident the present accused had come to his handcart and forcibly took away money of Rs.100/- from the cash. For this incident, the complainant lodged a complaint in the police. On the day of incident accused came to handcart of the complainant and he inflicted a blow of Iron bar (Kosh) on the head of the complainant by saying as to why (complainant) lodged the complaint against him. Thus, from evidence it appears that the accused armed with iron bar (kosh) had come to handcart of the complainant with an intention to inflict the blow of Kosh on the complainant. Looking to the facts of the case, 8 days before the date of incident, accused forcibly snatched away an amount of Rs.100/- from the cash kept on the handcart, for which he lodged the complaint and thereafter after lapse of 8 days the accused went to handcart of the complainant and he was armed with the iron bar. These facts, themselves suggest that accused had predetermined to quarrel with the complainant. But, in this case, as per evidence of complainant, the accused came from behind and immediately inflicted blow of iron bar on the complainant. Under these circumstances, this fact cannot be taken lightly because the accused took a revenge for complaint having been lodged by complainant for offence committed by accused before 8 days of the incident. Looking to these facts and circumstances, arguments of Ms.Sagar cannot be accepted that accused be let-off considering the sentence already served out by him. Still, however, this Court is of the opinion that, looking to nature of offence sentence of rigorous imprisonment of three years is some what harsh and it is required to be reduced.

5. In view of the above facts and circumstances of the case, the order portion of sentence is modified by reducing sentence of rigorous imprisonment of three years for offence under Sec.324 of IPC to rigorous imprisonment for 1 1/2 (one and half) years. The other portion of order of sentence is not disturbed. The accused shall run both the sentences concurrently. In view of this,

this Criminal Revision Application is partly allowed. Rule is made absolute to the aforesaid extent.

(H.H. Mehta, J.)

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